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Intellectual Property Administration
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Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. _____ **10005248-1** _____

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s):   Mehrban Jam

Application No.: 09/836,952

Filing Date: 04-17-2001

Confirmation No.: 6956

Examiner: Fred I. Ehichioya

Group Art Unit: 2162

Title: System and Method for Providing Context-Aware Computer Management Using Smart Identification Badges

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on _____ 06-18-2008 _____ .

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

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Date of facsimile: August 18, 2008

Typed Name: Dan C. Hu

Signature:

Respectfully submitted,

Mehrban Jam

By

Dan C. Hu

Attorney/Agent for Applicant(s)

Reg No.:   40,025

Date: August 18, 2008

Telephone: (713) 468-8880, ext. 304

Rev 10/07 (ReplyBrf)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Mehrban Jam	§	Art Unit:	2162
		§		
Serial No.:	09/836,952	§		
		§	Examiner:	Fred I. Ehichioya
Filed:	April 17, 2001	§		
		§		
For:	System and Method for	§	Atty. Dkt. No.:	10005248-1
	Providing Context-Aware	§		(HPC.0209US)
	Computer Management Using	§		
	Smart Identification Badges	§		

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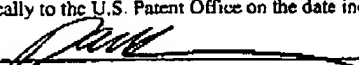Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

The following sets forth Appellant's Reply to the Examiner's Answer dated June 18,

2008. As indicated on page 3 of the Examiner's Answer, a new ground of rejection under

35 U.S.C. § 101 has been raised against claims 13-19 and 31-35.

Appellant requests that the appeal be maintained, and arguments against the new ground

of rejection are set forth before.

I.   NEW GROUND OF REJECTION UNDER 35 U.S.C. § 101

The Examiner rejected each of independent claims 13 and 31 based on the allegation that

"a computer-usable medium embodying computer program code," as recited in these claims, is

not defined by the Specification or drawings "as a physical object." Examiner's Answer at 4.

Thus, according to the Examiner, "one of ordinary skill in the art at the time of present invention

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will not consider applicant's claimed computer-usable medium to be a physical device that constitutes a machine within the meaning of 101 and therefore non-statutory ...." *Id.*

Appellant respectfully disagrees with the Examiner's assessment. As stated by the M.P.E.P, "[d]ata structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer." M.P.E.P. § 2106.01 (8th ed., Rev. 6), at 2100-18. However, "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory." *Id.*

Claim 13 recites a "computer-usable medium embodying computer program code that when executed by a computer causes performance of context-aware computer management" that includes the elements recited in claim 13. Although the term "computer-usable medium" is slightly different from "computer-readable medium" noted in the M.P.E.P., it is respectfully submitted that these two terms are equivalent for purposes of establishing whether or not claim 13 recites statutory subject matter. A person of ordinary skill in the art would clearly recognize that in the context of claim 13, the computer-usable medium has to be a physical object to enable a computer to execute computer program code embodied in the computer-usable medium. In other words, the "computer-usable medium" of claim 13 does **not** constitute descriptive material *per se*, but rather, has to be a physical object that is accessible by a computer to execute the program code embodied in such physical object.

Therefore, it is respectfully submitted that claim 13 recites statutory subject matter under § 101.

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Independent claim 31 similarly recites statutory subject matter.

Therefore, reversal of the § 101 rejection of claims 13-19 and 31-35 is respectfully

requested.

II.   REPLY TO EXAMINER'S ANSWER REGARDING CLAIMS 1-8, 11, 13-17, 21-28, 31-33, 35, AND 36.

Claim 1 recites, *inter alia*, identifying a lowest clearance level from among the clearance

levels assigned to the smart badges within the boundary, and providing access to that sub-set of

the information (stored on a computer) having a clearance level no higher than the lowest

identified clearance level.

As argued by the Appellant in the Appeal Brief, § 4.2.8 of Ljungh, cited by the Examiner,

does not disclose "identifying a lowest clearance level from among the clearance levels assigned

to the smart badges within the boundary," in combination with the "providing" element of claim

1. The Examiner's Answer argued that § 4.2.8 of Ljungh discusses both a guest badge and a

smart badge, and that these badges are the same, and perform the same functionality "and could

be assigned clearance levels." Examiner's Answer at 22. The Examiner further argued that

§ 4.2.8 of Ljungh indicates that the "lowest clearance level was identified for the Guest badge."

Id. However, a guest badge in Ljungh being assigned a lowest clearance level still does not

constitute the following element of claim 1: "identifying a lowest clearance level from among

the clearance levels assigned to the smart badges within the boundary," where this identified

lowest clearance level is used to provide access to a sub-set of the information stored on a

computer, as recited in claim 1.

The Examiner's Answer also continued to incorrectly cite § 4.2.1 of Ljungh as disclosing

"providing access to that sub-set of the information (stored on a computer) having a clearance

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level no higher than the lowest identified clearance level." As noted in the Appeal Brief, § 4.2.1 of Ljungh refers to door opening features using the badges described in Ljungh. This passage of Ljungh notes that as the badge owner approaches a door in question, the badge receives a challenge question from an IR receiver positioned at the door, and the owner must authenticate himself within a certain time to grant the owner an access through the door. None of these teachings of Ljungh constitute providing access to that sub-set of information having a clearance level no higher than the lowest identified clearance level (which was identified from among the clearance levels assigned to the smart badges within the boundary). All § 4.2.1 of Ljungh teaches is automatic door opening based on voice authentication.

The Examiner also pointed to the discussion on page 7 of Ljungh regarding a database server that has methods for finding out whether or not a particular user is allowed to see and update certain information in the database. Examiner's Answer at 23. Claim 1 specifically recites identifying a **lowest clearance level** from among a plurality of clearance levels assigned to smart badges within a boundary, in combination with providing access to that sub-set of the information having a clearance level no higher than the **lowest identified clearance level**. The passage on page 7 of Ljungh refers to finding whether or not a **particular** user is allowed to see certain information in the database – there is absolutely nothing here to even hint at identifying a **lowest** clearance level from **among a plurality of clearance levels** assigned to smart badges **within a boundary,** and then providing access to that sub-set of the information having a clearance level no higher than the lowest identified clearance level.

In view of the foregoing, and in view of arguments made in the Appeal Brief, reversal of the final rejection of the above claims is respectfully requested.

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III.   REPLY TO EXAMINER'S ANSWER REGARDING CLAIMS 9, 18, AND 34

Dependent claim 9 further recites defining a badge removal confidence level indicating whether each smart badge has been continuously worn by corresponding assigned smart badge wearers. The Examiner's Answer cited page 11, § 3.3.2 of Ljungh as purportedly disclosing this feature of claim 9. The cited passage refers to updating a position of a user on a map as a badge wearer changes rooms. There is absolutely no hint given here of defining a badge removal confidence level indicating whether each smart badge has been continuously worn by a corresponding assigned smart badge wearer.

The Examiner's Answer also cited page 15, § 4.2.1 of Ljungh as disclosing the subject matter of claim 9. This cited passage refers to door opening features, in which detecting whether a badge has been stolen or falsified can be accomplished by using a voice sensor on the badge for authentication through voice identification. Voice identification to authenticate a user is different from what is recited in claim 9, which is defining a badge removal confidence level indicating whether each smart badge has been continuously worn by corresponding assigned smart badge wearers. The subject matter of claim 9 is nowhere hinted at by Ljungh.

Dependent claims 18 and 34 are similarly further allowable over Ljungh. Therefore, reversal of the final rejection of the above claims is respectfully requested.

IV.   REPLY TO EXAMINER'S ANSWER REGARDING CLAIMS 10 AND 19

Dependent claim 10 recites assigning an expiration period to each of the smart badges, and de-authenticating and erasing all data stored on smart badge whose expiration period has been exceeded.

The Examiner made the following incorrect statement in support of the final rejection: "it is inherent as shown on this paragraph [page 14, § 4.1.5, ¶ 2] that access could be denied

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based on expiration of assigned time and the data on the badge that permits this assign could be removed or erased based on this expiration time." Examiner's Answer at 25. The cited passage on page 14, 4.1.5, ¶ 2 of Ljungh refers to use of an administration tool to remove data. However, the removal of data as performed in § 4.1.5 of Ljungh is **not** based on the expiration period (timeout noted on page 9 of Ljungh) having been exceeded.

Moreover, the statement of inherency by the Examiner finds no support in the evidence of record. To support a rejection based on inherency, the Examiner must establish that the claim feature is **necessarily** present in the cited reference, in this case Ljungh. Ljungh specifically teaches that an administration tool is used by a user to remove data – this is quite different from the subject matter of claim 10, which recites de-authenticating and erasing all data stored on a smart badge whose expiration period has been exceeded.

Therefore, claim 10 is clearly not anticipated by Ljungh for this further additional reason. Claim 19 is similarly further allowable over Ljungh.

Reversal of the final rejection of the above claims is respectfully requested.

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V.   CONCLUSION

In view of the foregoing arguments and the arguments presented in the Appeal Brief,

reversal of the final rejection of all claims is respectfully requested.

Respectfully submitted,

Date: _8/18/2008_

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